PART IV

Section 1-B

CENTRAL ACTS AND ORDINANCES

GOVERNMENT OF KARNATAKA

Law and Parliamentary Affairs Secretariat

NOTIFICATION

No. LAW 96 LCA 1974, dated 6th November 1974

The Governor of Karnataka is pleased to order that the Companies (Amendment) Act, 1974 (41 of 1974) which has been published in the Gazette of India, Extraordinary, Part II, Section 1, dated 10th September 1974 be republished in the *Karnataka Gazette,* for general information.

H. SUBBA RAO,

Under Secretary to Government,
Department of Law and Parliamentary Affairs.

Assented to on 10th September 1974 Act No. 41 of 1974

THE COMPANIES (AMENDMENT) ACT, 1974

AN

ACT

further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act 1956 and the Monopolies and Restrictive Trade Practices Act, 1969.

BE it enacted by Parliament in Twenty-fifth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Companies (Amendment) Act, 1974.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

2. *Amendment of Section 2.*—In the Companies Act, 1956 (1 of 1956) (hereinafter referred to as the principal Act), in section 2,—

(*i*) after clause (18), the following clause shall be inserted, namely :—

'(18-A) "group" means a group of two or more individuals, associations, firms or bodies corporate, or any combination thereof, which, exercises or is in a position to exercise or has the object of exercising, control over any body corporate, firm or trust.

Explanation.—If any question arises as to whether two or more individuals, associations, firms or bodies corporate, or any combination thereof, constitute, or fall within a "group", the Company Law Board shall, after giving such

individuals, associations, firms or bodies corporate or any combination thereof, a reasonable opportunity of being heard, decide the same ;' ;

(ii) to clause (25), the following *Explanations* shall be added, namely :—

'*Explanation I.*—For the purposes of this Act, references to " managing agent " shall be construed as references to any individual, firm, or body corporate who, or which, was at any time before the 3rd day of April, 1970, the managing agent of any company.

Explanation II.—For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969, (17 of 1969) this clause shall remain, and shall be deemed always to have remained, in force ;' ;

(*iii*) in clause (30), on the expiry of six months from the commencement of the Companies (Amendment) Act, 1974,—

(*i*) in sub-clause (*a*), for the words " the secretaries and treasurers or the secretary ", the words " or the secretaries and treasurers " shall be substituted ;

(*ii*) sub-clause (*c*) shall be omitted ;

(*iv*) in clause (36), after the words " other document ", the words " inviting deposits from the public or " shall be inserted ;

(*v*) to clause (44), the following *Explanations* shall be added, namely :—

Explanation I.—For the purposes of this Act, references to " secretaries and treasurers " shall be construed as references to any firm or body corporate which was, at any time before the 3rd day of April, 1970, secretaries and treasurers of any company.

Explanation II.—For the removal of doubts, it is hereby declared that notwithstanding anything contained

in section 6 of the Companies (Amendment) Act 1969, (17 of 1969), this clause shall remain, and shall be deemed always to have remained, in force;';

(*vi*) in clause (45),—

(*a*) for the words "any individual, firm or body corporate", the words "any individual possessing the prescribed qualifications," shall be substituted;

(*b*) for the words "purely ministerial or administrative duties", the words "ministerial or administrative duties," shall be substituted.

3. *Insertion of new section* 4-A.—After section 4 of the principal Act, the following section shall be inserted, namely:—

"4A. *Public financial institutions.*—(1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely:—

(*i*) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);

(*ii*) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);

(*iii*) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(*iv*) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(*v*) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963).

(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official

Gazette, specify such other institution as it may think fit to be a public financial institution :

Provided that no institution shall be so specified unless—

(*i*) it has been established or constituted by or under any Central Act, or

(*ii*) not less than fifty-one per cent, of the paid-up share capital of such institution is held or controlled by the Central Government "

4. *Amendment of section* 10*E*.—In section 10E of the principal Act,—

(*i*) in sub-section (2) for the word "five", the word nine" shall be substituted ;

(*ii*) after sub-section (4A), the following sub-sections shall be inserted namely :–

(4*B*) Without prejudice to the provisions of sub-section (4*A*), the Board, with the previous approval of the Central Government, may, by order in writing, form one or more Benches from among its members and authorise each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order ; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

(4*C*) Every Bench referred to in sub-section (4*B*) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit, in respect of the following matters, namely :—

(*a*) discovery and inspection of documents or other material objects producible as evidence ;

(*b*) enforcing the attendance of witnesses and requiring the deposit of their expenses :

(*c*) compelling the production of documents or other material objects producible as evidence and impounding the same;

(*d*) examining witnesses on oath;

(*e*) granting adjournments;

(*f*) reception of evidence on affidavits.

(4*D*) Every Bench shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898), and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 (45 of 1860) of the Indian Penal Code (45 of 1860) and for the purpose of section 196 of that Code.".

5. *Amendment of sections* 17, 18 *and* 19.—(1) In sections 17, 18 and 19 of the principal Act for the word "Court", wherever it occurs, the words "Company Law Board" shall be substituted.

(2) Nothing contained in sub-section (1) shall apply to any proceedings under section 17, or under sub-section (4) of section 18, which is pending at the commencement of the Companies (Amendment) Act, 1974, before any Court or to any alteration of the memorandum of a company which has been confirmed, before such commencement, by any Court.

6. *Amendment of section* 43*A*.—In section 43A of the principal Act,—

(*i*) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(1*A*) Without prejudice to the provisions of sub-section (1), where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act, 1974, or incorporated there-

after, is not, during the relevant period, less than rupees one crore the private company shall, irrespective of its paid-up share capital, become on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said average annual turnover, a public company by virtue of this sub-section :

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (*iii*) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

(*1B*) Where not less than twenty-five per cent of the paid-up share capital of a public company, having share capital, is held by a private company, the private company shall,—

(*a*) on and from the date on which the aforesaid percentage is first held by it after the commencement of the Companies (Amendment) Act, 1974, or

(*b*) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1974, on and from the expiry of the period of three months from the date of such commencement, unless within that period the aforesaid percentage is reduced below twenty-five per cent of the paid-up share capital of the public company,

become, by virtue of this sub-section, a public company and thereupon all other provisions of this section shall apply thereto :

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or any at any time be reduced, below seven.";

(*ii*) in sub-section (8), after clause (b), the following clause shall be inserted, namely :—

" (*c*) that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average annual turnover of rupees one crore or more " ;

(*iii*) after sub-section (8), the following sub-section shall be inserted, namely :—

" (9) Every private company, having share capital, shall file with the Registrar along with the annual return a certificate signed by both the signatories of the return, stating that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return since the date of the incorporation of the private company, it did not hold twent-five per cent or more of the paid-up share capital of one or more public companies.

Explanation.—For the purposes of this section,—

(*a*) " relevant period " means the period of three consecutive financial years,—

(*i*) immediately preceding the commencement of the Companies (Amendment) Act, 1974, or

(*ii*) a part of which immediately preceded such commencement and the other part of which immediately, followed such commencement, or

(*iii*) immediately following such commencement or at any time thereafter ;

(*b*) " turnover ", of a company, means the aggregate value of the realisation made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year."

7. *Insertion of new sections 58A and 58B.*—After section 58 of the principal Act, the following sections shall be inserted, namely :—

" 58A. *Deposits not to be invited without issuing an advertisement.*—(1) The Central Government may, in con-

sultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members.

(2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless—

(*a*) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1), and

(*b*) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed.

(3) (*a*) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1974, in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of Indai Act, 1934, (2 of 1934) unless renewed in accordance with clause (*b*), be repaid in accordance with the terms of such deposit.

(*b*) No deposit referred to in clause (*a*) shall be renewed by the company after the expiry of the term thereof unless the deposit is such that it could have been accepted if the rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company.

(*c*) Where, before the commencement of the Companies (Amendment) Act, 1974, any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), repayment of such deposit shall be made in full on or before the 1st day of April, 1975, and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction.

(4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1974, in contravention of the rules made under sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow.

(5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (*c*) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section,—

(*a*) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the Court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court stand discharged ;

(*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(6) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under sub-section (1) or in contravention of the manner or condition prescribed under that sub-section or in contravention of the provisions of sub-section (2), as the case may be,—

(*a*) the company shall be punishable,—

(*i*) where such contravention relates to the acceptance of any deposit, with fine which shall not be less

than an amount equal to the amount of the deposit so accepted,

(*ii*) where such contravention relates to the invitation of any deposit, with fine which may extend to one lakh rupees but shall not be less than five thousand rupees;

(*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(7) (*a*) Nothing contained in this section shall apply to,—

(*i*) a banking company, or

(*ii*) such other company as the Central Government may, after consulta ion with the Reserve Bank of India, specify in this behalf.

(*b*) Except the provisions relating to advertisement contained in clause (*b*) of sub-section (2), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Explanation.—For the purposes of this section deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

58B. *Provisions relating to prospectus to apply to advertisement.*—The provisions of this Act relating to a prospectus shall, so far as may be, apply to an advertisement referred to in section 58A.

8. *Amendment of section* 73.—In section 73 of the principal Act,—

(*i*) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where a prospectus, whether issued generally or not, states that an application has been, or will be, made

for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, where such permission has been applied for before that day, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal." ;

(*ii*) in sub-section (2),—

(*a*) for the words " or has not been granted as aforesaid ", the words "or, such permission having been applied for, has not been granted as aforesaid " shall be substituted ;

(*b*) for the words " five per cent ", the words " twelve per cent " shall be substituted ;

(*iii*) after sub-section (2), the following sub-sections shall be inserted, namely :—

" (2A) Where permission has been granted by the recognized stock exchange or stock exchanges for dealing in any shares or debentures in such stock exchange or each such stock exchange and the moneys received from applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest, and if such money is not repaid within

eight days, from the day the company becomes liable to pay it, the directors of the company shall be jointly and severally liable to repay the money with interest at the rate of twelve per cent per annum from the expiry of the said eighth day :

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(2B) If default is made in complying with the provisions of sub-section (2A), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, and where repayment is not made within six months from the expriy of the eighth day, also with imprisonment for a term which may extend to one year." ;

(*iv*) in sub-section (3), for the words, brackets and figure " so long as the company may become liable to repay it under sub-section (2)", the words, brackets and figure " until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in manner specified in sub-section (2)" shall be substituted ;

(*v*) after sub-section (3), the following sub-section shall be inserted, namely :

"(3A) Moneys standing to the credit of the separate bank account referred to in sub-section (3) shall not be utilised for any purpose other than the following purposes, namely :

(*a*) adjustment against allotment of shares, where the shares have been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus ; or

(*b*) repayment of moneys received from applicants in pursuance of the prospectus, where shares have not been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus, as the case may be, or where the company is for any other reason unable to make the allotment of share.";

(*vi*) for sub-section (5), the following sub-section shall be substituted, namely:

"(5) For the purposes of this section, it shall be deemed that permission has not been granted if the application for permission, where made has not been disposed of within the time specified in sub-section (1)."

9. *Amendment of section* 79.—(1) In section 79 of the principal Act,—

(*i*) in sub-sections (2) and (3), for the word "Court", wherever it occurs, the words "Company Law Board" shall be substituted;

(*ii*) in sub-section (2),—

(*a*) in clause (*ii*), the words and brackets "(not exceeding ten per cent or such higher percentage as the Central Government may permit in any special case)" shall be omitted;

(*b*) to clause (*ii*), the following proviso shall be added, namely:

"Provided that no such resolution shall be sanctioned by the Company Law Board if the maximum rate of discount specified in the resolution exceeds ten per cent, unless that Board is of opinion that a higher percentage of discount may be allowed in the special circumstances of the case.".

(2) Nothing contained in sub-section (1) shall affect any issue of shares at a discount which has been sanctioned by the Court or any proceeding relating to such sanction which is pending before the Court at the commencement of the Companies (Amendment) Act, 1974.

10. *Substitution of new section for section* 90.—For section 90 of the principal Act, the following section shall be substituted, namely :—

"90. *Savings.*—(1) Nothing in sections 85, 86, 88 and 89 shall, in the case of any shares issued by a public company before the commencement of this Act, affect any voting rights attached to the shares save as otherwise provided in section 89, or any rights attached to the sares as to dividend, capital or o herwise.

(2) Nothing in sections 85 to 89 shall apply to a private company, unless it is a subsidiary of a public company.

(3) For the removal of doubts it is hereby declared that on and from the commencement of the Companies (Amendment) Act, 1974, the provisions of section 87 shall apply in relation to the voting rights attached to preference shares issued by a public company before the 1st day of April, 1956, as they apply to the preference shares issued by a public company after that date.

Explanation.—For the purposes of this section, references to a public company shall be construed as including references to a private company which is a subsidiary of a public company.".

11. *Insertion of new section* 94-A.—After section 94 of the principal Act, the following section shall be inserted, namely :—

" 94A. *Share capital to stand increased where an order is made under section* 81(4).—(1) Notwithstanding anything contained in this Act, where the Central Government has, by an order made under sub-section (4) of section 81, directed that any debenture or loan or any part thereof shall be converted into shares in a company, the conditions contained in the memorandum of such company shall where such order has the effect of increasing the nominal share capital of the company, stand altered and the nominal share

capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(2) Where, in pursuance of an option attached to debentures issued or loans raised by the company, any public financial institution proposes to convert such debentures or loans into shares in the company, the Central Government may, on the application of such public financial institution, direct that the conditions contained in the memorandum of such company shall stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(3) Where the memorandum of a company becomes altered, whether by reason of an order made by the Central Government under sub-section (4) of section 81 or sub-section (2) of this section, the Central Government shall send a copy of such order to the Registrar and also to the company and on receipt of such order, the company shall file in the prescribed form, within thirty days from the date of such receipt, a return to the Registrar with regard to the increase of share capital and the Registrar shall, on receipt of such order and return, carry out the necessary alterations in the memorandum of the company."

12. *Insertion of new sections* 108A *to* 108H.—After section 108 of the principal Act, the following sections shall be inserted namely :—

108A. *Restriction on the acquisition of shares.*—(1) Except with the previous approval of the Central Government, no individual group, constituent of a group, firm, body corporate, or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire whether in his or its own name or in the name of any other person, any equity shares in a public company, or a private company which is a subsidiary of a public company, if the total

nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity share already held in the company by such individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, exceed twenty-five per cent, of the paid-up equity share capital of such company.

(2) Any person who acquires any share in contravention of the provisions of sub-section (1), shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

108B. *Restriction on the transfer.*—(1) Every body corporate, or bodies corporate under the same management, holding whether singly or in the aggregate, ten per cent, or more of the nominal value of the subscribed equity share capital of any other company, shall, before transferring one or more of such shares give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

(2) Where, on receipt of an intimation given under sub-section (1) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may by order, direct that—

(*a*) no such share shall be transferred to the proposed transferre :

Provided that no such order shall preclude the body corporate or, bodies corporate from intimating, in accord-

ance with the provisions of sub-section (1), to the Central Government its proposal to transfer the share to any other person, or

(*b*) where such share is held in a company engaged in any industry specified in Schedule XIII, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(3) Where a direction is made by the Central Government under clause (*b*) of sub-section (2), the share referred to in such direction shall stand transferred to the Central Government or the corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body corporate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (4)

Explanation.—In this sub-section, "market value" means, in the case of a share which is quoted on any recognised stock exchange, the value quoted at such stock exchange on the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the Court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as estimated by the Central Government or the corporation, as the case may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the Court.

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the

date of receipt by it of the intimation, given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

(6) (*a*) Every body corporate which makes any transfer of shares in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees.

(*b*) Where any contravention of this section has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years.

108C. *Restriction on the transfer of shares of foreign companies.*—(1) No body corporate, or bodies corporate under the same management, which holds, or hold in the aggregate, ten per cent or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall tranfser any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refuse unless the Central Government is satisfied that such transfer would be prejudicial to the public interest.

(2) (*a*) Every body corporate which makes any transfer of shares in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees.

(*b*) Where any contravention of this section has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years.

108D. *Power of Central Government to direct companies not to give effect to the transfer.*—(1) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a

change in the controlling interest of the company is likely to take place and that such change is prejudicial to the interests of the company or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block or shares and—

(*a*) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee to exercise any voting or other rights attaching to such share or block of shares,

(*b*) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transfer or to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is made by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person from whom such share or block of shares was acquired by such transferee.

(3) If the refund referred to in sub-section (2) is not made within a period of thirty days from the date of the direction referred to in sub-section (1), the Central Government shall, on the application of the person entitled to get the refund, direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.

(4) The person to whom any share or block of shares stand retransferred under sub-section (2) shall, on making refund under sub-section (2) or sub-section (3), be eligible to exercise voting or other rights attaching to such share or block of shares.

108E. *Time within which refusal to be communicated.*—Every request made to the Central Government

for according its approval to the proposal for the acquisition of any share referred to in section 108A or the transfer of any share referred to in section 108C shall be presumed to have been granted unless within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

108F. *Penalty for contravention of sections* 108A, 108B *or* 108C.—(1) Every person who exercises any voting or other right in relation to any share acquired in contravention of the provisions of section 108A, section 108B or section 108C shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(2) If any company gives effect to any voting or other right exercised in relation to any share acquired in contranvention of the provisions of section 108A, section 108B or section 108C, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

108G. *Nothing in sections* 108A *to* 108D *to apply to Government companies, etc.*—Nothing contained in section 108A, section 108B, section 108C or section 108D shall apply to the transfer of any share to, or by,—

(*a*) any company in which not less than fifty-one per cent of the share capital is held by the Central Government;

(*b*) any corporation (not being a company) established by or under any Central Act;

(*c*) any public financial institution specified by or under section 4A.

108H. *Construction of references to "shares" or "share capital" in sections* 108A *to* 108D.—References in sections 108A, 108B, 108C and 108D to shares or share capital, as the case may be, shall be construed as references

to shares or share capital, respectively, of a body corporate owning any undertaking to which the provisions of Part A of Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969, (54 of 1969), apply.'.

13. *Amendment of section* 141.—(1) In section 141 of the principal Act, for the word "Court", wherever it occurs, the words "Company Law Board" shall be substituted.

(2) Nothing in sub-section (1) shall affect any order made by the Court under section 141 or any proceeding relating to any matter specified in that section which is pending before the Court at the commencement of the Companies (Amendment) Act, 1974.

14. *Amendment of section* 186.—In section 186 of the principal Act, in sub-section (1), for the word "Court", wherever it occurs the words "Company Law Board" shall be substituted.

15. *Insertion of new sections* 187C *and* 187D.—After section 187B of the principal Act, the following sections shall b inserted, namely :—

"187C. *Declaration by persons not holding beneficial interest in any share.*—(1) Notwithstanding anything contained in section 150, section 153B or section 187B, a person whose name is entered, at the commencement of the Companies (Amendment) Act, 1974, or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share.

(2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of shares of a cmopany shall, within thirty days from the commencement of the Companies (Amendment)

Act, 1974, or within thirty days after his becoming such beneficial owner, whichever is later, make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (1), sub-section (2) or sub-section (3) is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form with the Registrar with regard to such declaration.

(5) (*a*) If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to mak a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues.

(*b*) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(6) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.

(7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged.

187D. *Investigation of beneficial ownership of shares in certain cases.*—Where it appears to the Central Government that there are good reasons so to do, it may appoint one or more Inspectors to investigate and report as to whether the provisions of section 187C have been complied with regard to any share, and thereupon the provisions of section 247 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.".

16. *Amendment of section* 192.—In section 192 of the principal Act, in sub-section (4),—

(*i*) in item (*ii*) of clause (*ee*), for the word and figures " section 294 " the words and figures " section 294 of section 294AA " shall be substituted;

(*ii*) after clause (*f*), the following caluse shall be inserted, namely:

"(*g*) copies of the terms and conditions of appointment of a sole selling agent appointed under section 294 or of a sole selling agent or other person appointed under section 294AA.".

17. *Insertion of new section* 204A.—After section 204 of the principal Act, the following section shall be inserted, namely:—

'204A. *Restrictions on the appointment of former managing agents or secretaries and treasurers to any office.*—(1) Except with the previous approval of the—

(*a*) company in general meeting, and

(*b*) Central Government,

no company shall, during a period of five years from the commencement of the Companies (Amendment) Act, 1974

appoint as secretary, consultant or adviser or to any other office, by whatever name called,—

(*i*) any individual, firm or body corporate who, or which, had at any time after the 15th day of August, 1960, been holding office as the managing agents or secretaries and treasurers of the company, or

(*ii*) any associate of the managing agents or secretaries and treasurers as aforesaid:

Provided that where any such appointment has been made before the commencement of the Companies (Amendment) Act, 1974, no such appointment shall be continued by the company after a period of six months from such commencement unless such appointment has been approved by the company in general meeting and the Central Government has been approved by the company in general meeting and the Central Government before the expiry of the said period.

(2) (*a*) Where—

(*i*) any individual, firm or body corporate, who, or which, had at any time after the 15th day of August 1960, been holding office as the managing agents or secretaries and treasurers of the company, or

(*ii*) any associate of the managing agents or secretaries and treasurers as aforesaid;

has been appointed by such company at any time during a period of five years preceding the 3rd day of April, 1970, or at any time after that date, as its secretary consultant or adviser, or to any other office under it, by whatever name called the Central Government may, if it appears to it that there is good reason for so doing, require the company to furnish to it such information as it may consider necessary, with regard to the trems and conditions of the appointment of such individual, firm or body corporate as secretary, consultant or adviser or as the holder of such other office, for the purpose of determining whether or not such terms

and conditions are prejudicial to the interest of the company.

(*b*) If the company refuses or neglects to furnish any such information, the Central Government may appoint a competent person to investigate and report on the terms and conditinons of appontment to any of the offices referred to in clause (*a*) and the provisions of section 240A shall, so far as may be, apply, to such investigation, as they apply to any other investigation made under any other provision of this Act.

(*c*) If, after perusal of the information furnished by the company, or as the case may be, the report submitted by the person appointed under clause (*b*), the Central Government is of opinion that the terms and conditions of appointment to any of the offices referred to in clause (*a*) are prejudicial to the interests of the company, it may, by order, make such variations in those terms and conditions as would, in its opinioin, no longer render such terms and conditions of appointment prejudicial to the interests of the company.

(*d*) As from such date as may be specified by the Central Government in the order aforesaid, the appointment referred to in clause (*a*) shall be regulated by the terms and condition as varied by that Government.

(3) For the purposes of this section the expression "appointment" includes re-appointment, employment and re-employment.

18. *Amendment of section 205.*—In section 205 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely :—

"(2A) Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1974, no divident shall be, declared or paid by a company for any financial year out of the profits of the company for that year arrived at after provid-

ing for depreciation in accordance with the probisions of sub-section (2), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent, as may be prescribed :

Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher precentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf."

19. *Insertion of new sections* 205A *and* 205B.—After section 205 of the principal Act, the following sections shall be inserted, namely :—

'205A. *Unpaid dividend to be transferred to special dividend account.*—(1) Where, after the commencement of the Companies (Amendment) Act, 1974, a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted; within forty-two days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expriy of the said period of forty-two days, transfer the total amount of dividend which remains unpaid or in relation to which no dividend warrant has been posted within the said period of forty-two days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called " Unpaid Dividend Account of. . . : Company Limited/Company (Private) Limited."

(2) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amendment) Act, 1974, remains unpaid at such commencement, the company shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out

of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.

(4) If the default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of three years from the date of such transfer, shall be transferred by the company to the general revenue account of the Central Government but a claim to any money so transferred to the general revenue account may be preferred to the Central Government by the person to whom the money is due and shall be dealt with as if such transfer to the general revenue account had not been made, the order, if any, for payment of the claim being treated as an order for refund of revenue.

(6) The company shall, when making any transfer under sub-section (5) to the general revenue account of the Central Government any unpaid or unclaimed dividend, furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sums included in such transfer, the nature of the sums, the names and last known addresses of the person entitled to receive the sum, the amount to which each person is entitled and the nature of his claim thereto and such other particulars as may be prescribed.

(7) The company shall be entitled to a receipt from the Reserve Bank of India for any money transferred by it to the general revenue account of the Central Government and such receipt shall be an effectual discharge of the Company in respect thereof.

(8) If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the failure continues.

205B. *Payment of unpaid or unclaimed dividend.*—Any person claiming to be entitled to any money transferred under sub-section (5) of section 205A to the general revenue account of the Central Government, may apply to the Central Government for an order for payment of the money claimed; and the Central Government may, if satisfied, whether on a certificate by the company or otherwise, that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him after taking such security from him as it may think fit.

20. *Amendment of section* 209.—In section 209 of the principal Act, in sub-section (4),—

(*i*) the brackets and letter "(*a*)" shall be omitted;

(*ii*) clauses (*b*), (*c*) and (*d*) shall be omitted.

21. *Insertion of new section* 209A.—After section 209 of the principal Act, the following section shall be inserted, namely :—

"209A. *Inspection of books of account, etc., of companies.*—(1) The books of account and other books and papers of every company shall be open to inspection during business hours—

(*i*) by the Registrar, or

(*ii*) by such officer of Government as may be authorised by the Central Government in this behalf :

Provided that such inspection may be made without giving any previous notice to the company or any officer thereof.

(2) It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the company in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,—

(*i*) make or cause to be made copies of books of account and other books and papers, or

(*ii*) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, (5 of 1908), while trying a suit, in respect of the following matters, namely :

(*i*) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person ;

(*ii*) summoning and enforcing the attendance of persons and examining them on oath ;

(*iii*) inspection of any books, registers and other documents of the company at any place.

(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Central Government.

(7) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries.

(8) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which shall not be less than five thousand rupees, and also with imprisonment for a term not exceeding one year.

(9) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years from such date ".

22. *Amendment of section* 217.—In section 217 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely :—

(2A) (a) The Board's report shall also include a statement showing the name of every employee of the company who—

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than thirty-six thousand rupees ; or

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than three thousand rupees per month.

(*b*) The statement referred to in clause (a) shall also indicate,—

(i) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and

(ii) such other particulas as may be prescribed.

Explanation.—"Remuneration" has the meaning assigned to it in the *Explanation* to section 198.'.

23. *Amendment of section* 224.—In section 224 of the principal Act,—

(i) to sub-section (1), the following proviso shall be added, namely :—

"Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (1B).";

(ii) in sub-sections (1) and (1A), the words "unless he is a retiring auditor" shall be omitted;

(iii) after sub-section (1A), the following sub-sections shall be inserted, namely :—

(1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1974, no company or its Board of directors shall appoint or re-appoint any person or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies :

Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as specified number of companies per partner of the firm :

Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number in the aggregate :

Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate.

(1C) For the purposes of enabling a company to comply with the provisions of sub-section (1B), a person or firm holding, immediately before the commencement of the Companies (Amendment) Act, 1974, appointment as the auditor of a number of companies exceeding the specified number, shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor ; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor and forward a copy of the intimation to each of the companies referred to therein.

Explanation I.—For the purposes of sub-section (1B) and (1C), " specified number " means,—

(*a*) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies ;

(*b*) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more.

Explanation II.—In computing the specified number, the number of companies in respect of which or any part of

which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.';

(iv) in sub-section (2), for the words "At any annual general meeting", the words "Subject to the provisions of sub-section (1B) and section 224A, at any annual general meeting" shall be substituted.

24. *Insertion of new section 224A.*—After section 224 of the principal Act, the following section shall be inserted, namely:—

'224A. *Auditor not to be appointed except with the approval of the company by special resolution in certain cases.*—(1) In the case of a company in which not less than twenty-five per cent of the subscribed share capital is held, whether singly or in any combination, by—

(*a*) a public financial institution or a Government company or Central Government or any State Government, or

(*b*) any financial or other institution established by any Provincial or State Act in which a State Government holds not less than fifty-one per cent of the subscribed share capital, or

(*c*) a nationalised bank or an insurance company carrying on general insurance business,

the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a special resolution.

(2) Where any company referred to in sub-section (1) omits or fails to pass at its annual general meeting any special resolution appointing an auditor or auditors, it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting, and thereupon the provisions of sub-section (3) of section 224 shall become applicable in relation to such company.

Explanation.—For the purposes of this section,—

(*a*) "general insurance business" has the meaning assigned to it in the General Insurance (Emergency Provisions) Act, 1971 (17 of 1971) ;

(*b*) "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).'.

25. *Amendment of section* 233B.—In section 233B of of the principal Act,—

(i) in sub-section (1), for the words beginning with "who shall be either" and ending with "prescribed qualifications", the following shall be substituted, namely :—

"who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) :

Provided that if the Central Government is of opinion that sufficient number of cost accounants within the meaning of the Cost and Works Accountants Act, 1959, are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette, direct that, for such period as may be specified in the said notification, such Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies and thereupon a Chartered Accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company." ;

(ii) for sub-section (2), the following sub-section shall be substituted, namely :—

"(2) The auditor under this section shall be appointed by the Board of Directors of the company with the previous approval of the Central Government." ;

(iii) in sub-section (4), for the words "Company Law Board", the words "Central Government" shall be substituted ;

(iv) after sub-section (4), the following sub-sections shall be inserted, namely :—

"(5) (*a*) A person referred to in sub-section (3) or sub-section (4) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.

(*b*) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company.

(*c*) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (*a*) or clause (*b*) of this sub-section, he shall, on and from th edate on which he be comes so subject, cases to conduct the audit of the cost accounts of the company.

(6) Upon receipt of an order under sub-section (1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.

(7) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (4), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report.

(8) If after considering the report referred to in sub-section (4) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary, that Government may call for such further information and explanation and thereupon the company shall furnish the same within such time as may be specified by that Government.

(9) On receipt of the report referred to in sub-section (4) and the informations and explanations furnished

by the company under sub-section (7) and sub-section (8), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary.

(10) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.

(11) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both ".

26. *Amendment of section* 269.—In section 269 of the principal Act,—

(i) in sub-section (1) (including the proviso thereto), the words " for the first time ", wherever they occur, shall be omitted ;

(ii) to sub-section (i), the following *Explanation* shall be added, namely :—

' *Explanation.*—In this sub-section, and in sub-sections (3) and (5), " appointment " includes " re-appointment " and " wholetime director " includes " a director in the whole-time employment of the company ".' ;

(iii) after sub-section (2), the following sub-sections shall be inserted, namely :—

" (3) The Central Government shall not accord its approval under sub-section (1) in any case, unless it is satisfied that—

(*a*) it is in the interests of the company to have a managing or whole-time director,

(*b*) the proposed managing or whole-time director of the company is, in its opinion, a fit and proper person to be appointed as such and that the appointment of such person as managing or whole-time director is not against the public interest, and

(*c*) the terms and conditions of appointment of the proposed managing or whole-time director of the company are fair and reasonable.

(4) While accordingly its approval under sub-section (1), the Central Government may, if it is of opinion that in the interests of the company it is necessary so to do, accord approval to the appointment for a period lesser than the period for which the person is proposed to be appointed by the company.

(5) If the appointment of a person as a managing or whole-time director is not approved by the Central Government, the person so appointed shall vacate his office as such managing or whole-time director on the date on which the decision of the Central Government is communicated to the company, and if he omits or fails to do so he shall be punishable with fine which may extend to five hundred rupees for every day during which he omits or fails to vacate such office".

27. *Insertion of new section* 294AA.—After section 294A of the principal Act, the following section shall be inserted, namely :—

"294AA. *Power of Central Government to prohibit the appointment of sole selling agents in certain cases.*— (1) Where the Central Government is of opinion that the demand for goods of any category, to be specified by that Government, is substantially in excess of the production or supply of such goods and that the services of sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that sole selling agents shall not

be appointed by a company for the sale of such goods for such period as may be specified in the declaration.

(2) No company shall appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as sole selling agent of that company unless such appointment has been previously approved by the Central Government.

(3) No company having a paid-up share capital of rupees fifty lakhs or more shall appoint a sole selling agent except with the consent of the company accorded by a special resolution and the approval of the Central Government.

(4) The provisions of sub-sections (5), (6) and (7) of section 294 shall, so far as may be, apply to the sole selling, or the sole purchasing or buying, agents of a company.

(5) A company seeking approval under this section shall furnish such particulars as may be prescribed.

(6) Where any appointment has been made of a sole selling agent by a company before the commencement of the Companies (Amendment) Act, 1974, and the appointment is such that it could not have been made except on the authority of a special resolution passed by the company and the approval of the Central Government, if sub-section (2), sub-section (3) and sub-section (8), were in force at the time of such appointment, the company shall obtain such authority and approval within six months from such commencement; and if such authority and approval are not so obtained, the appointment of the sole selling agent shall stand terminated on the expiry of six months from such commencement.

(7) If the company in general meeting disapproves the appointment referred to in sub-section (3), such appointment shall, not withstanding anything contained in sub-section (6), cease to have effect from the date of the general meeting.

(8) The provisions of this section except those of sub-section (1), shall apply so far as may be to the appointment by a company of sole agent for the buying or purchasing of goods on behalf of the company.

Explanation.—In this section,—

(*a*) "appointment" includes "re-appointment"

(*b*) "substantial interest",—

(i) in relation to an individual, means the beneficial interest held by such individual or any of his relatives, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent of the paid-up share capital of the company, whichever is the lesser ;

(ii) in relation to a firm, means the beneficial interest held by one or more partners of the firm or any relative of such partner, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company whichever is the lesser ;

(iii) in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent of the paid-up share capital of the company, whichever is the lesser.

28. *Amendment of section* 297.—In section 297 of the principal Act, to sub-section (1), the following proviso shall be added, namely :—

"Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government".

29. *Amendment of section* 314.—In section 314 of the principal Act,—

(i) in clause (*b*) of sub-section (1), for the portion beginning with "no partner or relative" and ending with "legal or technical adviser", the words " no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of five hundered rupees or more,

except that of managing director or manager," shall be substituted;

(ii) after sub-section (1A), the following sub-section shall be inserted, namely:—

" (1B) Notwithstanding anything contained in sub-section (1),—

(*a*) no partner or relative of a director or manager,

(*b*) no firm in which such director or manager, or relative of either, is a partner,

(*c*) no private company of which such a director or manager, or relative of either, is a director or member,

shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than three thousand rupees, except with the prior consent of the company by a special resolution and the approval of the Central Government:

Provided that in a case where no office of profit could have been held in the company by a person if this section had been in force at the time when the appointment or re-appointment to such office of profit was made, the company shall, within a period of six months from the commencement of the Companies (Amendment) Act, 1974, obtain the approval of the Company in general meeting and of the

Central Government for the holding, by such person, of the office of profit." ;

(iii) sub-section (2) shall be re-lettered as clause (a) thereof, and after clause (*a*), as so re-lettered, the following clause shall be inserted, namely :—

"(*b*) The company shall not waive the recovery of any sum refundable to it under clause (*a*) unless permitted to do so by the Central Government." ;

(iv) after sub-section (2A), the following sub-sections shall be inserted, namely :—

"(2B) If, after the commencement of the Companies (Amendment) Act, 1974, any office or place of profit is held, without the prior consent of the company by a special resolution and the approval of the Central Government, the the partner, relative, firm or private company appointed to such office or place of profit shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him on and from the date on which the office was so held by him.

(2C) If any office or place of profit is held in contravention of the provisions of the proviso to sub-section (1B), the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the expiry of six months from the commencement of the Companies (Amendment) Act, 1974, or the date next following the date of the general meeting of the company referred to in the said proviso, whichever is earlier and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.

(2D) The company shall not waive the recovery of any sum refundable to it under sub-section (2B) or (2C), as the case may be, unless permitted to do so by the Central Government." ;

(v) in sub-section (3), for the words "within the meaning of sub-section (1)", the words "within the meaning of this section" shall be substituted ;

(vi) after sub-section (3), the following sub-section shall be inserted, namely:—

" (4) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company.".

30. *Insertion of new section* 383A.—After section 383 of the principal Act, the following section shall be inserted, namely :—

"383A. *Certain companies to have Secretaries.*— (1) Every company having a paid-up share capital of rupees twenty-five lakhs or more shall have a wholetime secretary, and where the Board of Directors of any such company company comprises only two directors, neither of them shall be the secretary of the company.

(2) Where, at the commencement of the Companies (Amendment) Act, 1974,—

(*a*) any firm or body corporate is holding office, as the secretary of a company, such firm or body corporate shall, within six months from such commencement, vacate office as secretary of such company ;

(*b*) any individual is holding office as the secretary of more than one company having a paid-up share capital of rupees twenty-five lakhs or more, he shall, within a period of six months from such commencement, exercise his option as to the company of which he intends to continue as the secretary and shall, on and from such date, vacate office as secretary in relation to all other companies."

31. *Amendment of section* 408.—In section 408 of the principal Act,—

(*i*) in sub-section (1), for the words " not more than two persons ", the words " such number of persons as the

Central Government may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest" shall be substituted;

(*ii*) in sub-section (2), for the words "not more than two persons", the words "such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interest of the company, or its shareholders or the public interest" shall be substituted;

(*iii*) after sub-section (5), the following sub-sections shall be inserted, namely:

"(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs.

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company."

32. *Amendment of section* 591.—Section 591 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1), as so re-numbered, the following sub-section shall be inserted, namely:

"(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent of the paid up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more

citizens of India and one or more bodies corporated incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India."

33. *Amendment of section* 600.—In section 600 of the principal Act, sub-section (3) shall be relettered as clause (*a*) thereof, and after clause (*a*), as so re-lettered, the following clause shall be inserted, namely:

"(*b*) On and from the commencement of the Companies (Amendment) Act, 1974,—

(*i*) the provisions of section 159 shall, subject to such modifications or adaptations as may be made therein by the rules made under this Act, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India;

(*ii*) the provisions of sections 209, 209A, 233A and 233B and sections 234 to 246 (both inclusive) shall, so far as may be, apply only to the Indian business of a foreign company having an established place of business in India, as they apply to a company incorporated in India."

34. *Amendment of section* 616.—In section 616 of the principal Act, after clause (*d*), the following clause shall be inserted, namely:

"(*e*) to such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notification."

35. *Amendment of section* 619.—In section 619 of the principal Act, to sub-section (2), the following proviso shall be added, namely:

"Provided that the limits specified in sub-sections (1B) and (1C) of section 224 shall apply in relation to the

appointment or re-appointment of an auditor under this sub-section."

36. *Insertion of new section* 619B.—After section 619A of the principal Act, the following section shall be inserted, namely :

"619B. *Provisions of section* 619 *to apply to certain companies.*—The provisions of section 619 shall apply to a company in which not less than fifty-one per cent of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely :

(*a*) the Central Government and one or more Government companies ;

(*b*) any State Government or Governments and one or more Government companies ;

(*c*) the Central Government, one or more State Governments and one or more Government companies ;

(*d*) the Central Government and one or more corporations owned or controlled by the Central Government ;

(*e*) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government ;

(*f*) one or more corporations owned or controlled by the Central Government or the State Government ;

(*g*) more than one Government company."

37. *Amendment of section* 637A.—In section 637A of the principal Act,—

(*i*) in sub-section (1), for the words " Central Government ", wherever they occur, the words " Central Government or Company Law Board " shall be substituted ;

(*ii*) in sub-section (2),—

(*a*) for the words " Central Government ", the words " Central Government or Company Law Board " shall be substituted ;

(*b*) in clauses (*a*) and (*b*), after the words " that Government ", the words " or Board " shall be inserted.

38. *Insertion of new section* 637AA.—After section 637A of the principal Act, the following section shall be inserted, namely :

" 637AA. *Power of Central Government to fix a limit with regard to remuneration.*—Notwithstanding anything contained in section 198, section 309 or section 637A, the Central Government may, while according its approval under section 269, to any appointment or to any remeuneration under section 309, section 310, section 311 or section 387, fix the remuneration of the person so appointed or the remuneration, as the case may be, within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government shall have regard to—

(*a*) the financial position of the Company ;

(*b*) the remuneration or commission drawn by the individaul concerned in any other capacity, including his capacity as a sole selling agent ;

(*c*) the remuneration or commission drawn by him from any other company ;

(*d*) professional qualifications and experience of the individual concerned ;

(*e*) public policy relating to the removal of disparities in income."

39. *Amendment of section* 641.—In section 641 of the principal Act, in sub-section (3), for the portion beginning with " comprised in one session or " and ending with " session immediately following ", the following shall be substituted, namely :

"comprised in one session or in two or more successive sessions, and if, before the expriy of the session immediately following the session or the successive session aforesaid."

40. *Amendment of section* 642.—In section 642 of the principal Act, in sub-section (3), for the portion beginning with "comprised in one session or" and ending with "session immediately following", the following shall be substituted, namely:

"comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid."

41. *Insertion of new Schedule XIII.*—After Schedule XII of the principal Act, the following Schedule shall be inserted, namely.

"SCHEDULE XIII

(*See* section 108B)

PART I

1. Aircraft.
2. Air transport.
3. Arms and ammunition and allied items of defence equipment.
4. Atomic energy.
5. Coal and lignite.
6. Heavy castings and forgings of iron and steel.
7. Heavy electrical plant including large hydraulic and steam turbines.

8. Heavy plant and machinery required for iron and steel production, for mining, for machine tool manufacture and for such other basic industries as may be specified by the Central Government.

9. Iron and steel.

10. Mineral oils.

11. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.

12. Mining and processing of copper, lead, zinc, tin, molybdenum and wolfram.

13. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.

14. Railway transport.

15. Ship-building.

16. Telephones and telephone cables, telegarph and wireless apparatus (excluding radio receiving sets).

Part II

1. Aluminium and other non-ferrous metals not included in Part I.

2. All other minerals except "minor minerals" as defined in rule 3 of the Minerals Concession Rules, 1949.

3. Antibitotics and other essential drugs.

4. Basic and intermediate products required by chemical industries such as the manufacture of drugs, dyestuffs and plastics.

5. Carbonisation of coal.

6. Chemical pulp.

7. Ferro alloys and tool steels.

8. Fertilizers.

9. Machine tools.

10. Road transport.

11. Sea transport.

12. Synthetic rubber".

42. *Substitution of new section for section 22 of Act 42 of 1956.*—For section 22 of the Securities Contracts (Regulation) Act, 1956, the following section shall be substituted, namely :—

'22. *Right of appeal against refusal of stock exchanges to list securities of public companies.*—Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company, the company shall be entitled to be furnished with reasons for such refusal, and may,—

(*a*) within fifteen days from the date on which the reasons for such refusal are furnished to it, or

(*b*) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1) of section 73 of the Companies Act, 1956 (1 of 1956) (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown allow,

appeal to the Central Government against such refusal, ommission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard,—

(*i*) vary or set aside the decision of the stock exchange, or

(*ii*) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government.'

43. *Amendment of Act 54 of* 1969.—In the Monopolies and Restrictive Trade Practices Act, 1969, in clause (*g*) of section 2,—

(*i*) in sub-clause (*iii*) (c), the words "within the meaning of section 370 of the Companies Act, 1956," (1 of 1956) shall be omitted;

(*ii*) in sub-clause (*v*), the words "within the meaning of the said section 370" shall be omitted;

(*iii*) after sub-clause (*vii*), but before the *Illustration, the* following *Explanations* shall be inserted, namely:

"*Explanation 1.*—For the purposes of this Act, two undertakings, owned by bodies corporate, shall be deemed to be under the same management,—

(*i*) if one such body corporate exercise control over the other or both are under the control of the same group or any of the constituents of the same group; or

(*ii*) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(*iii*) if one such body corporate holds not less than one-third of the equity shares in the other or controls the composition of not less than one-third of the total membership of the Board of directors of the other; or

(*iv*) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with the relatives of such directors) one-third of the directors of the other; or

(*v*) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-third of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-third of the equity shares in the other; or

(*vi*) if the same body corporate or bodies corporate belonging to a group, holding not less than one-third of the equity shares in one body corporate, also hold not less than one-third of the equity shares in the other; or

(*vii*) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual whether independently or together with his relatives or the same body corporate (whether independently or together with its subsidiaries) ; or

(*viii*) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate ; or

(*ix*) if the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.—If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of or controlled by, the group shall be deemed to be under the same management.

Explanation III.—If two or more bodies corporate under the same management hold, in the aggregate, not less than one-third equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first-mentioned bodies corporate.

Explanation IV.—In determining whether or not two or more bodies corporate are under the same management, the shares held by public financial institutions in such bodies corporate shall not be taken into account."

SHRI K. K. SUNDARAM,

Secretary to Government of India.